

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCE

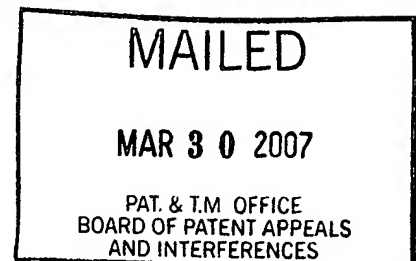
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Ex parte JAMES V. LOVENSTEIN and JAMES R. MOSS

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Application 10/729,045

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on January 8, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

Information Disclosure Statement (IDS) were filed February 3, 2006. It is not clear from the record whether the examiner considered the IDS or whether the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

On April 7, 2006, appellants filed an Appeal Brief. A review of the file reveals that the “Summary of Claimed Subject Matter” does not map the independent claim to the specification, as set forth in 37 CFR § 41.37(c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board’s new rules, please see the web page entitled “More Information on the Rules of Practice Before the BPAI,” Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

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In addition, the Examiner's Answer mailed June 30, 2006, does not fully comply with the requirements of 37 CFR § 41.37. The following heading needs to be included in accordance with MPEP § 1207.02:

“Related Proceedings Appendix” – Copies of any decisions rendered by a court or the Board in any proceeding identified by the examiner in the “Related Appeals and Interference” section of the answer.

Proper correction of the Examiner's Answer is required.

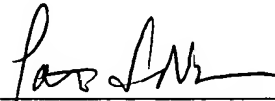
Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to consider the Information Disclosure Statement filed February 3, 2006;
- 2) provide appropriate written notification by the examiner to appellants of such consideration; and
- 3) hold the Appeal Brief filed on April 7, 2006, defective;
- 4) notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 5) vacate the Examiner's Answer mailed June 30, 2006, and issue a revised Examiner's Answer in response to the supplemental Appeal Brief that is in full compliance with 37 CFR § 41.37;and

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6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES



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